

UNITED STATES DISTRICT COURT

Northern District of California

San Francisco Division

KORVEL M. SUTTON, et al.,

No. C 11-03911 LB

Plaintiffs,

**ORDER RE PLAINTIFF WILLIAMS'S
DISCOVERY REQUEST AND
MOTION**

v.

APPLE COMPUTERS ITUNES, et al.

Defendants.

On August 8, 2009, *pro se* Plaintiff Korvel Sutton sued Apple Computers iTunes (“Apple”) and individuals Donald McMillan and James Callon (collectively, “Defendants”) for copyright infringement. Complaint, ECF No. 1.¹ Subsequently, Plaintiff Roderick O. Williams filed a motion to intervene as a plaintiff in the action, and the court granted it. Order Granting Movants’ Motions to Intervene, ECF No. 78.

On June 14, 2012, Mr. Williams filed two documents: (1) a Request for Production of Documents (“RFP”) that seeks from Defendant Rams Horn BV information regarding the total sales of the copyrighted material; and (2) a Motion for Leave to Reopen Discovery. RFP, ECF No. 112; Motion for Leave to Reopen Discovery, ECF No. 113.

Under Federal Rule of Civil Procedure 5(d)(1), “disclosures under Rule 26(a)(1) or (2) and the

¹ Citations are to the Electronic Case File (“ECF”) with pin cites to the electronic page number at the top of the document, not the pages at the bottom.

1 following discovery requests and responses must not be filed until they are used in the proceeding or
2 the court orders filing: depositions, interrogatories, requests for documents or tangible things or to
3 permit entry onto land, and requests for admission.” This means that Mr. Williams did not need to
4 file his RFP with the Court. Instead, he only needed to have in served on Defendant Rams Horn BV.
5 *See* Federal Rule of Civil Procedure 34(a). Thus, the court need not take any action with respect to
6 it.

7 The court also need not take any action with respect to his motion. Discovery is still open: in its
8 Case Management and Pretrial Order, the court set a non-expert discovery completion date of July
9 19, 2012. *See* Case Management and Pretrial Order, ECF No. 60. In other words, the court does not
10 need to reopen discovery because discovery is not closed. Mr. Williams also asks the Court to
11 compel the discovery he requested in his RFP—if Defendant Rams Horn BV refuses to produce it.
12 Under Federal Rule of Civil Procedure 34(b)(2)(a), parties have 30 days to respond to discovery
13 requests. Since 30 days have not yet passed since Mr. Williams filed (and presumably served) his
14 RFP, it would be premature for the Court to order Defendant Rams Horn BV to comply with the
15 request. Therefore, the Court DENIES without prejudice the Motion for Leave to Reopen
16 Discovery.

17 **IT IS SO ORDERED.**

18 Dated: July 3, 2012



19 LAUREL BEELER
20 United States Magistrate Judge
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